

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5251 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTILAL SAVJIBHAI .

Versus

STATE OF GUJARAT & OTHERS .

Appearance:

MR SURESH M SHAH for Petitioner

MR NN PANDYA for Respondent No. 1 and 2

MR PV HATHI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has made a grievance that the respondent-Collector has committed a serious error in regularising the encroachment made by respondent no.3 over the government land. The learned counsel for the petitioner does not dispute that the Collector has the power to regularise the encroachment. It has come on the

record also from the reply that the Collector has regularised the encroachment made by respondent no.3 after taking instructions from respondent no.1, State of Gujarat. A reference has been made to the resolution dated 8-1-1980 under which a policy was framed for regularising the encroachment made on the Government land, and in pursuance of this resolution, the respondent no.2 contended that the respondent no.1 had instructed for regularisation of the encroachment of respondent no.3. The respondent no.3 is a schedule caste being a Harijan. The respondent no.3 has been granted a retail dealership by the Bharat Petroleum Corporation Ltd. to start a petrol pump on National Highway No.8B. The possession of the land was with respondent no.3 and he started constructing thereon to instal the petrol pump. This Sp. Civil Application has been filed by the petitioner and interim relief has been granted by this Court in terms of Para no.18(c). The respondent no.3 has been restrained from making any construction over the plot in question. The Letters Patent Appeal has been filed against the order of the interim relief and Letters Patent Bench has passed the order to permit thereunder the petitioner to raise the construction though he has to furnish undertaking that the construction which will be made hereafter will be at his own risk, and subject to such order if any that the court may pass for the demolition of the construction. It is a fact which is admitted by the petitioner that during this period the respondent no.3 has already raised the construction of the petrol pump. The petrol pump has been installed. The respondent no.3 is working as a dealer of Bharat Petroleum Corporation. The fact that the respondent no.3 is a schedule caste being a Harijan is also not disputed. The grievance of the petitioner is that he had also applied for the land for industrial purpose, but his application has not been considered.

2. It is not in dispute that earlier the respondent no.3 has been granted the land for industrial purpose, but he could not deposit the amount, and that allotment has come to an end. The case of respondent no.3 is that the land allotted to him earlier was not sufficient to meet the requirement to instal the petrol pump, and as such, he allowed the allotment to come to an end. He applied for fresh allotment. The counsel for the petitioner contended that the encroachment made by the respondent no.3 was taken seriously by the Government, but at the later stage the same has been regularised. The contention of the counsel for the petitioner is not acceptable. The respondent no.3 has come up with a case of grant of dealership to him from Bharat Petroleum

Corporation Ltd. and he need the land for doing the aforesaid business as a retail dealer. He is a schedule caste being a Harijan and taking into consideration all these aspects and the fact that there is a resolution which permit the regularisation of the encroachment over the government land, the power of which vests with the respondent no.2 and the fact that it has been regularised by respondent no.2 under the instruction of respondent no.1, I fail to see any illegality in the action of respondent no.2. The order which has been passed in the present case for regularisation of the encroachment made by respondent no.3 does not suffer from any illegality. The State of Gujarat has rejected the application of the petitioner on the ground that on its instruction the regularisation has been made by the Collector otherwise also the petitioner has no locus-standi to challenge that order. He was not a person to whom land which has been ordered to be regularised, has been allotted. It is not the case of the petitioner that he is the owner of the said land. The petitioner is only one of the applicant and his application is still pending for the allotment of the land. It is not the case of the petitioner that after regularisation of the land in favour of respondent no.3, no land is left for the allotment thereof to the petitioner. There are so many other applicants for the allotment of the land as well as Gujarat Industrial Development Corporation is also raising a claim for allotment of the land to it for the industrial development. In the reply to the writ petition, the respondent no.2 has come up with a case that the petitioner's application made by the petitioner for grant of land is pending before respondent no.2 alongwith several other applications including that of Gujarat Industrial Development Corporation. It has further been stated that an appropriate decision would be taken on the application pending before the respondent no.2 in due course. Taking into consideration all these facts, it cannot be said that any of the legal or fundamental right of the petitioner has been infringed. The petitioner has no locus standi to challenge the order of the respondent no.2 regularising the encroachment of the government land by respondent no.3. Moreover, the respondent no.3 is a schedule caste being a Harijan. In case if the regularisation is being made which is permissible also, it should not be interfered with. In the result, this Sp. Civil Application fails and the same is dismissed. Rule is discharged. However, it is hereby ordered to the respondent no.2 that the application of the petitioner for grant of land which is pending before him may be considered alongwith several other applications including that of Gujarat Industrial development Corporation within

reasonable time say within a period of four months from
the date of receiving certified copy of this order.

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